

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GARY ANDERSON, LOUIS SCOHY and  
GEORGE SQUIER,

UNPUBLISHED  
October 10, 2006

Plaintiffs-Appellees,

v

EUGENE MCCONVILLE and UNITED PLANT  
GUARD WORKERS ASSOCIATION,

No. 265965  
Macomb Circuit Court  
LC No. 95-002084-NZ

Defendants-Appellants.

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Before: Fitzgerald, P.J., and Markey and Talbot, JJ.

PER CURIAM.

Defendants, Eugene McConville and United Plant Guard Workers Association (“UPGWA”) appeal by leave granted from the trial court’s order denying their motion for summary disposition on plaintiffs’ claims of fraudulent or negligent misrepresentation and age discrimination. We reverse.

This appeal arises from litigation initiated by plaintiffs, in both federal and state courts, because of their failure to receive early-retirement packages offered by defendants. In the early 1990’s, the UPGWA began to experience financial difficulties. In late 1994, McConville, as president of the UPGWA, proposed eliminating specific Union officer positions as a potential cost-cutting measure. To effectuate this restructuring, McConville proposed to offer an early retirement plan (ERP) to eligible officers and directors. Under the proposed ERP, plaintiffs and others, as Union officers, would be eligible to receive substantially increased retirement benefits. Although the Union’s Internal Executive Board (IEB) initially approved the ERP, some Union members voiced objection, asserting the ERP was contrary to the UPGWA constitution. At the UPGWA national convention, the membership voted against adopting the increased early retirement benefits. Consequently, the ERP was never implemented and the previously existing UPGWA Retirement Plan (“the Plan”) was not amended.

Defendants first argue that the trial court erred by denying their motion for summary disposition of plaintiffs’ fraudulent or negligent misrepresentation claim. Defendants filed their motion for summary disposition arguing that plaintiffs’ failed to present evidence supporting their allegations and that collateral estoppel barred plaintiffs’ misrepresentation claim. This Court reviews a trial court’s decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). The applicability

of collateral estoppel also presents a question of law, subject to de novo review. *Barrow v Pritchard*, 235 Mich App 478, 480; 597 NW2d 853 (1999).

In deciding whether McConville or the IEB had the apparent authority to bind the UPGWA to implement the ERP, the Sixth Circuit Court of Appeals, in a concurrent case arising under the same facts and circumstances, ruled on plaintiff's federal claims:

In this case, Plaintiffs-Appellees had actual knowledge of the limitations on pension benefits imposed by Article XI, Section 2 of UPGWA's constitution and should have known the appropriate procedures for amending UPGWA's constitution. ***Although Plaintiffs-Appellees may have believed that McConville and the IEB had the authority to bind UPGWA to the December 7, 1994 resolution, we conclude that Plaintiffs-Appellees' actual knowledge and imputed knowledge made this reliance unreasonable.*** Therefore, we conclude that McConville and the IEB did not have apparent authority to offer the increased early-retirement benefits, and thus UPGWA is not bound by the December 7, 1994 resolution. [*Anderson v Int'l Union, UPGWA*, 370 F3d 542, 551 (CA 6, 2004) (“*Anderson II*”) (emphasis added; footnote omitted).]

Defendants assert that the Sixth Circuit's determination regarding plaintiffs' “reasonable reliance” for purposes of deciding the apparent authority issue in the federal matter collaterally estopped plaintiffs from litigating the “reasonable reliance” element of plaintiffs' state misrepresentation claim. The trial court rejected defendants' argument and denied summary disposition.

Collateral estoppel precludes relitigation of an issue in a different, subsequent action between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding. *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 667 NW2d 842 (2004). The doctrine bars relitigation of issues where the parties had a full and fair opportunity to litigate those issues in an earlier action. *Arim v Gen Motors Corp*, 206 Mich App 178, 195; 520 NW2d 695 (1994). The issues must be identical and not merely similar. *Eaton Co Bd of Co Rd Comm'rs v Schultz*, 205 Mich App 371, 376; 521 NW2d 847 (1994). Collateral estoppel is intended to relieve parties of the costs and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication by preventing inconsistent decisions. *Monat, supra* at 692-693. “Generally, for collateral estoppel to apply three elements must be satisfied: (1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full (and fair) opportunity to litigate the issue; and (3) there must be mutuality of estoppel.” *Id.* at 683-685 (internal quotations and citation omitted).

In ruling on the issue of apparent authority, the Sixth Circuit Court of Appeals observed that “[w]hether plaintiffs' reliance was reasonable may turn in part, on whether they were aware of the possible legal challenges to the December 7, 1994, resolution before they accepted the early retirement offer.” *Anderson v Int'l Union, UPGWA*, 150 F3d 590, 593 (CA 6, 1998) (“*Anderson I*”). Indeed, when the Sixth Circuit Court of Appeals subsequently ruled that plaintiffs could not recover, the Court concluded “that Plaintiffs-Appellees' actual knowledge

and imputed knowledge [of the limitations on pension benefits] made this reliance unreasonable.” *Anderson II*, *supra* at 552.

A party’s reliance in a misrepresentation or fraud action must be reasonable. *Bergen v Baker*, 264 Mich App 376, 389; 691 NW2d 770 (2004); *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 690-691; 599 NW2d 546 (1999). Whether plaintiffs’ reliance on McConville’s representations was reasonable depends on whether plaintiffs should have known or could have discovered the limitations on pension benefits imposed by the UPGWA constitution. The reliance issue was litigated before the federal courts and decided by the Sixth Circuit Court of Appeals. That determination expressly found that plaintiffs knew or should have known that the proposed ERP was illegal under the Union constitution, precluding reliance on representations made by defendants. The misrepresentations at issue in plaintiffs’ federal claims are identical to the misrepresentations relied on in plaintiffs’ state-law claims. Further, the issue of whether plaintiffs knew or should have known of the illegality of the ERP and, therefore, could not reasonably rely on statements by defendants, comprises the same issue in both the federal and state court litigation. Because the issue of plaintiffs’ reasonable reliance was litigated to a final decision in the federal courts, plaintiffs were precluded from relitigation of this issue in the state court.

Further, because plaintiffs’ cannot demonstrate reasonable reliance, the trial court should have dismissed the misrepresentation claim. Plaintiffs’ misrepresentation claim requires actual reliance on a false representation. *Phinney v Perlmutter*, 222 Mich App 513, 534; 564 NW2d 532 (1997). “A misrepresentation claim requires reasonable reliance on a false representation” and “there can be no fraud where a person has the means to determine that a representation is not true.” *Nieves v Bell Industries, Inc*, 204 Mich App 459, 464; 517 NW2d 235 (1994) (emphasis added). “[A] person who unreasonably relies on false statements should not be entitled to damages for misrepresentation.” *Novak*, *supra* at 690. The *Novak* Court concluded that, as a matter of law, the plaintiff’s reliance on certain statements was not reasonable because the statements contradicted the parties’ written contract. *Id.* at 689-691. Because reliance must be reasonable, “there can be no fraud where the means of knowledge regarding the truthfulness of the representation are available to the plaintiff and the degree of their utilization has not been prohibited by the defendant.” *Webb v First of Mich Corp*, 195 Mich App 470, 474; 491 NW2d 851 (1992). For example, in *Novak* this Court held that, in the context of a misrepresentation claim, it was unreasonable for the plaintiff to rely on oral statements that were expressly contradicted by the written contract. *Novak*, *supra* at 689.

Plaintiffs, as officers of the Union, had access to the UPGWA constitution and Plan, both of which contained specific limitations on retirement benefits. Thus, regardless of whether McConville made oral statements regarding the legality of the ERP and failed to provide a copy of correspondence detailing concerns of the Union’s attorney regarding the legality of the proposed ERP, plaintiffs, because of their position as Union officers, should have known that the UPGWA constitution and the Plan limited those benefits. *Novak*, *supra* at 689. At a minimum, plaintiffs could have inquired further with their own attorney with regard to potential legal challenges to the ERP. Additionally, Gary Anderson and George Squier conceded that the regional director had mentioned a potential challenge to the legality of the ERP before a vote occurred, which would indicate that further inquiry was needed. Therefore, the trial court erred in denying defendants’ motion for summary disposition of plaintiffs’ misrepresentation claim.

For their second issue on appeal, defendants assert that the trial court erred by denying their motion for summary disposition of plaintiffs' age discrimination claim. The bases for plaintiffs' argument are the numerous comments that McConville made regarding the ages of the officers at the meeting on December 7, 1994, and a February 28, 1995, letter written by McConville to Louis Scohy. On February 28, 1995, McConville sent a letter to Scohy explaining why he chose to appoint Kerry Lacey as chairman of the constitutional committee. McConville wrote that, "My reason for appointing Kerry as the Chairman of that committee is due to the fact that he has many years ahead of him, and I believe it would be a good experience for him to participate as chairman." At the December 7, 1994, meeting, McConville mentioned each officer's name and age as potential individuals to accept the early retirement proposal.

Plaintiffs' age discrimination claim was precluded because of the failure to produce evidence that plaintiffs suffered a materially adverse employment action and because the facts and circumstances of this case do not create an inference of unlawful animus.

The essence of an age discrimination claim requires proof that age was a determining factor in an adverse employment action. *Matras v Amoco Oil Co*, 424 Mich 675, 682-683; 385 NW2d 586 (1986). A person may prove unlawful age discrimination under MCL 37.2202(1)(a) with either direct or indirect evidence. *Id.* at 683. When a plaintiff presents direct evidence of discrimination, the case is one of "intentional discrimination," sometimes referred to as a "mixed-motive" case. *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 360; 597 NW2d 250 (1999). A person may alternatively prove unlawful age discrimination by circumstantial evidence, employing the burden-shifting framework adopted in *McDonnell Douglas v Green*, 411 US 792, 802-803; 93 S Ct 1817; 36 L Ed 2d 668 (1973). *Matras, supra* at 683.

Whether plaintiffs attempt to prove unlawful discrimination by using direct evidence or under the *McDonnell Douglas* approach, a necessary element of a successful discrimination claim is an adverse employment action. *Wilcoxon, supra* at 362. An "adverse employment action" for the purposes of proving unlawful discrimination "(1) must be materially adverse in that it is more than 'mere inconvenience or an alteration of job responsibilities,' and (2) must have an objective basis for demonstrating that the change is adverse, rather than the mere subjective impressions of the plaintiff." *Meyer v City of Centerline*, 242 Mich App 560, 569; 619 NW2d 182 (2000). Here, plaintiffs retired following the natural termination of their terms in office. At the international convention, Squier lost his bid for reelection, Anderson did not seek reelection and the membership voted to eliminate the vice president's position held by Scohy. After Squier lost his bid for reelection, he took a full retirement benefit in September 1995. In October 1996, Scohy took the regular early retirement benefit package.

Although plaintiffs did not receive the early retirement benefits as expected under the ERP, the circumstances do not give rise to an inference of unlawful discrimination based on age. *Hazle v Ford Motor Co*, 464 Mich 456, 463; 628 NW2d 515 (2001). Rather, the ERP was created as a solution to the financial difficulties of the Union and was voluntary to those who wanted to elect early retirement benefits. Although McConville discussed the ages of the officers at the December 7, 1994, meeting, the ages were relevant only to identify those who might be most interested in volunteering to take early retirement benefits. Every officer's name and age was discussed. Although McConville observed that some of the officers were closer to retirement age than others, the mere mentioning of an individual's age does not establish a prima

facie case of age discrimination. The purpose of McConville's discussion of the officers' ages, when taken in context, was not to discriminate against the older officers, but to solicit individuals to accept the ERP. McConville's statement in his February 25, 1995, letter regarding Lacey was simply an observation regarding Lacey's abilities, not evidence of discrimination against the older officers. Furthermore, the ERP was a voluntary option that was offered to all UPGWA officers. McConville stated that if there were no volunteers for the ERP, the Union would "brainstorm" to find alternative cost saving measures. Finally, plaintiffs failed to receive the benefits of the ERP not because of age discrimination, but because the ERP was deemed unlawful under the Labor-Management Reporting and Relations Act, 29 USC 501, the UPGWA constitution and Plan.

Reversed.

/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey  
/s/ Michael J. Talbot